

REMARKS

On page 2 of the Office Action, claims 7 and 8 were rejected under 35 U.S.C. 112, first paragraph. Applicants have amended claim 7 such that it is clear that the claim refers to the structural units under B) for which there is support in the specification. No new matter has been added. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection.

On page 3 of the Office Action, claims 16 and 17 were rejected under 35 U.S.C. 112, second paragraph. Applicants have amended claims 16 and 17 to clarify that the copolymers consist of the respective percentages of (B1) and (B2). Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection.

On page 4 of the Office Action, claims 1-17 were rejected under 35 U.S.C. 103(a) as being unpatentable over Mitsubishi EP 217,602 in view of Applicants alleged admission and Reimann et al., U.S. Patent No. 5,254,652 (“Reimann”). It is argued on page 4, lines 11-16 of the Office Action that it would be obvious to one skilled in the art that the mineral oil disclosed in EP ‘602, having a pour point of -5°C would inherently have a cloud point of less than -8°C. Applicants respectfully disagree. Applicants submit that it is known to one of ordinary skill in the art that an oil having a pour point of -5°C must have a cloud point above this temperature, not below this temperature. The pour point is the temperature where the oil loses fluidity, whereas the cloud point is the temperature where the oil shows opacity because of precipitating paraffins. This happens at a higher temperature than loss of fluidity. Thus, Applicants contend that a fuel having a cloud point of -8°C, at most, is therefore not obvious over EP ‘602 since the oils disclosed therein inherently show a considerably higher cloud point.

Applicants submit that the present invention is non-obvious over the cited references because the cited references fail to teach or suggest the following features: a cloud point below -8°C, a 95% distillation point of less than 350°C, a sulfur content of less than 500 ppm, and the use of a flow improver copolymer having monomers carrying alkyl radicals with 4 to 30 carbon atoms. Applicants point out that there was an existing need to solve the problem of finding flow improvers for oils having cloud points below -8°C, boiling point ranges (90-20%) of less than 120°C, and a 95% distillation point at temperatures below 360°C. Applicants submit that said problem was solved by the present invention.

Applicants disagree that it is disclosed in the cited references that the flow improvers of the cited references are able to improve cold flow properties of oils having the features of the present invention. Applicants found that oils having a cloud point of less than -8°C and simultaneously a 95% distillation point of less than 350°C cannot be treated by EVA copolymers as disclosed in EP '602. Applicants contend that the EVA copolymers of EP '602 are insufficient for these oils.

Furthermore, Applicants contend that Reimann or EP '602 cannot be used either alone or in combination to render the present invention obvious as they teach away from the present invention. Reimann teaches terpolymers which are copolymers of ethylene, vinyl acetate and vinyl neonate or vinyl neodecanoate. Reimann requires the presence of vinyl acetate in a terpolymer. Thus, Reimann and EP '602 each require a copolymer including vinyl acetate. The present claims do not require the presence of vinyl acetate. Accordingly, the cited references do not teach or suggest the present invention. Furthermore, Applicants disagree that their discussion of diesel fuels on page 4 of the specification can be combined with the cited

references to render the present invention obvious. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection.

On page 6 of the Office Action, claims 1-17 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-17 of copending Application No. 09/111,548. Applicants disagree with the rejection. Applicants filed a notice of express abandonment with the USPTO in Application No. 09/111,548 on July 16, 2001. Therefore, the rejection is moot. Applicants respectfully request reconsideration and withdrawal of the rejection.

On page 6 of the Office Action, claims 1-6 and 9-17 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 09/706,656. Applicants enclose a terminal disclaimer herewith for Application No. 09/706,656. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection.

In view of the foregoing, it is respectfully urged that the present claims are in condition for allowance and reconsideration is requested. An early notice to this effect is earnestly solicited. Should there be any questions regarding this application, the Examiner is invited to contact the undersigned at the number shown below.

Respectfully submitted,

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Enclosures:

Version with markings to show changes made

VERSION WITH MARKINGS TO SHOW CHANGES MADE

7. (Amended) The fuel oil composition as claimed in claim 1, wherein the structural units [(B1) and (B2) stated] under B) are selected from the group consisting of vinyl ethers, alkylacrylates, alkyl methacrylates or higher olefins having at least 5 carbon atoms.

16. (Amended) The fuel oil composition as claimed in claim 1, wherein the [composition comprises] copolymers consist of from 85 to 97 mol% of comonomers (B1) and from 3 to 15 mol% of comonomers (B2).

17. (Amended) The fuel oil composition as claimed in claim 16, wherein the [composition comprises] copolymers consist of from 90 to 96 mol% of comonomers (B1) and from 4 to 10 mol% of comonomers (B2).